

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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adh

September 27, 2021

Cancellation No. 92077524

Arash Homampour

v.

Arash Khorsandi

Ashley D. Hayes, Interlocutory Attorney:

Amended Petition Accepted; Motion to Dismiss Moot

On August 21, 2021, the Board suspended this proceeding pending its determination on Respondent's motion to dismiss. 6 TTABVUE. On August 31, 2021, Petitioner filed a consented motion for a 21-day extension of time to respond to Respondent's motion to dismiss. 10 TTABVUE. On September 21, 2021, Petitioner filed an amended petition to cancel. 12 TTABVUE. On September 22, 2021, Respondent filed a motion to strike the amended petition as untimely contending he did not consent to an extension of time for Petitioner to file an amended petition, the petition was filed more than 21 days after the motion to dismiss, and the filing violates the Board's August 21, 2021 suspension order. 13 TTABVUE.

The Board, in its discretion pursuant to its inherent authority to manage the cases on its docket, elects to decide Respondent's motion to strike prior to Petitioner filing

its response. Respondent's motion to strike is not well taken. As an initial matter, Respondent does not state he did not consent to the requested 21-day extension of time for Petitioner to respond to his motion to dismiss, as asserted in Petitioner's August 31, 2021 motion. 10 TTABVUE 3, ¶ 6. Nor did Respondent file a motion in response thereto stating it had not given such consent to the requested extension of time for Petitioner to respond to the motion to dismiss. Moreover, a "party in the position of plaintiff in a proceeding before the Board [] ordinarily can **respond** to a motion to dismiss by filing an amended complaint." See *Dragon Bleu (SARL) v. VENM, LLC*, 112 USPQ2d 1925, 1926 (TTAB 2014) (emphasis added). See also TBMP § 503.03 (plaintiffs to proceedings before the Board ordinarily can, and often do, **respond** to a motion to dismiss by filing, inter alia, an amended complaint.) (Emphasis added).

In view of the foregoing, the Board construes Respondent's consent to the 21-day extension as including the time for Petitioner to file an amended petition in response to the motion to dismiss. Moreover, the filing of the amended petition was not prohibited by the Board's suspension order inasmuch as it is germane to the motion. See Trademark Rule 2.127(d) (parties should not file papers "not germane" to the potentially dispositive motion). Finally, the Board finds Petitioner's retention of new counsel, 10 TTABVUE 3, ¶ 3, constitutes good cause for the requested extension of time to respond to the motion to dismiss in any event. See *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008) ("the Board is liberal in granting extensions of time before the period to act has elapsed so long as the

moving party has not been guilty of negligence or bad faith and the privilege of extension is not abused”). Accordingly, Petitioner’s motion for a 21-day extension of time to respond to Respondent’s motion to dismiss is **GRANTED**. Petitioner’s amended petition to cancel, 12 TTABUVE, timely filed on September 21, 2021, in response to the motion to dismiss, is its operative pleading of record. Accordingly, Respondent’s motion to dismiss, directed to Petitioner’s original pleading, is moot and will no further consideration.

Proceedings Resumed; Trial Dates Reset

Proceedings are **RESUMED**. Respondent is allowed until **THIRTY (30) DAYS** from the date of this order in which to file a response to the amended petition to cancel. Dates for disclosure, conference, discovery and trial are reset as shown in the schedule below.

Deadline for Discovery Conference	11/26/2021
Discovery Opens	11/26/2021
Initial Disclosures Due	12/26/2021
Expert Disclosures Due	4/25/2022
Discovery Closes	5/25/2022
Plaintiff's Pretrial Disclosures Due	7/9/2022
Plaintiff's 30-day Trial Period Ends	8/23/2022
Defendant's Pretrial Disclosures Due	9/7/2022
Defendant's 30-day Trial Period Ends	10/22/2022
Plaintiff's Rebuttal Disclosures Due	11/6/2022
Plaintiff's 15-day Rebuttal Period Ends	12/6/2022

Plaintiff's Opening Brief Due	2/4/2023
Defendant's Brief Due	3/6/2023
Plaintiff's Reply Brief Due	3/21/2023
Request for Oral Hearing (optional) Due	3/31/2023

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125, 37 C.F.R. §§ 2.121-2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a), 37 C.F.R. § 2.129(a).